



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 602

#### *Amendment in the Nature of a Substitute (Patron Prior to Substitute – Bell, Robert B.)*

LD#: 16105433

Date: 2/10/2016

Topic: Petit larceny with prior convictions

#### Fiscal Impact Summary:

- **State Adult Correctional Facilities:**  
\$76,852 (2 beds)
- **Local Adult Correctional Facilities:**  
\$10,184 (1 bed)
- **Adult Community Corrections Programs:**  
Cannot be determined

- **Juvenile Correctional Centers:**  
None (\$0)\*
- **Juvenile Detention Facilities:**  
None (\$0)\*

\* Provided by the Department of Juvenile Justice

#### Summary of Proposed Legislation:

The proposal amends § 18.2-104 of the *Code of Virginia*, relating to petit larceny.

Currently, under § 18.2-104, the penalty for misdemeanor larceny or a misdemeanor offense deemed to be or punished as larceny is elevated to a Class 6 felony if it is alleged in the warrant, indictment, etc., that the offender has been previously convicted of two or more prior larcenies or offenses deemed larceny. Under the proposal, convictions for robbery would be added to the list of prior offenses that contribute to the Class 6 felony. Thus, the proposal would expand the list of offenses that may be counted as prior convictions for the purposes of enhancing the penalty for a third offense to a felony. Penalties prescribed in § 18.2-104 would remain the same.

#### Analysis:

During fiscal year (FY) 2014 and FY2015, a total of 23,477 offenders were convicted in circuit or general district court of petit larceny or an offense punishable as petit larceny (as the primary, or most serious, offense). Examining court data for calendar year 2005 through FY2015 reveals that at least 11 of these offenders had less than two prior convictions for offenses currently listed under § 18.2-104 but would have sufficient prior record to trigger an elevation of the current offense from a Class 1 misdemeanor to a Class 6 felony under the proposal. Of these 11 offenders, 81.8% were sentenced to a local responsible (jail) term, with a median sentence of three months. The remaining 18.2% were not given an active term of incarceration to serve after sentencing.

The Sentencing Guidelines database for FY2014 and FY2015 indicates that a felony under § 18.2-104 for a third or subsequent petit larceny or offense punishable as petit larceny was the primary, or most serious, offense at sentencing in 3,192 cases. Of these offenders, 57.5% were sentenced to a local-responsible (jail)

term, with a median sentence of six months. An additional 26.8% received a state-responsible (prison) term, with a median sentence of 1.5 years. The remaining 15.7% did not receive an active term of incarceration to serve after sentencing.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** By expanding the list of prior offenses that would elevate a petit larceny or offense punishable as petit larceny to a Class 6 felony, the proposal is expected to increase the state-responsible (prison) bed space needs of the Commonwealth. The impact on state-responsible (prison) bed space needs is estimated to be two beds by FY2022. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$76,852.

#### Estimated Six-Year Impact in State-Responsible (Prison) Beds

FY17	FY18	FY19	FY20	FY21	FY22
1	2	2	2	2	2

**Local adult correctional facilities.** The proposal is also expected to increase the future need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be one bed by FY2022 (state costs: \$10,184; local costs: \$14,968).

#### Estimated Six-Year Impact in Local-Responsible (Jail) Beds

FY17	FY18	FY19	FY20	FY21	FY22
1	1	1	1	1	1

**Adult community corrections programs.** Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the net impact on local or state community corrections resources that may result from the proposal.

**Virginia's sentencing guidelines.** The sentencing guidelines cover felony violations of § 18.2-104 that are processed in Virginia's circuit courts. While no immediate adjustment to the guidelines would be necessary under the proposal, the Sentencing Commission would monitor sentencing practices under the revised law to determine if the guidelines should be adjusted at a later date. This is done in order to ensure that the guidelines reflect actual sentencing practices and continue to provide judges with a benchmark of the typical, or average, case.

**Juvenile correctional centers.** According to the Department of Juvenile Justice, the proposal will not increase juvenile correctional center bed space needs.

**Juvenile detention facilities.** The Department of Juvenile Justice reports that the proposal will not increase the bed space needs of juvenile detention facilities.

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**Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$76,852 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.**

**Assumptions underlying the analysis include:**

**General Assumptions**

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2015.
2. New cases resulting in state-responsible sentences were based on forecasts developed by the Secretary of Public Safety's Committee on Inmate Forecasting and approved in 2015.
3. Cost per prison bed was assumed to be \$31,406 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
4. Cost per jail bed was based on The Compensation Board's FY2014 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$30.57 per day or \$11,166 per year. The local cost was calculated by using the daily expenditure cost of \$78.53 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$44.93 per day or \$16,411 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

**Assumptions relating to offenders**

1. Eligible offenders were identified as those whose primary offense was a conviction for petit larceny or an offense punishable as petit larceny in General District Court or Circuit Court who had at least two prior convictions for any combination of the qualifying offenses (with at least one being a robbery), which would trigger an elevation of the current offense from a Class 1 misdemeanor to a Class 6 felony under the proposal.
2. It was assumed that prosecutors would charge all eligible offenders under the enhanced felony provisions.

**Assumptions relating to sentencing**

1. The impact of the proposed legislation, which would be effective on July 1, 2016, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2014. For larceny and fraud offenses, this rate was 9.9%.
3. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences for cases subject to the existing Class 6 felony penalty for a third or subsequent larceny under § 18.2-104.

**Limitations**

1. The Circuit Court Case Management System does not include cases from Fairfax or Alexandria. Although Virginia Beach left the system in FY2009, it rejoined the system in October 2014.

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